to commence proceedings as there was no privity of contract between the firm and the defendants. The proceedings should have been commenced in the name of Tan Hor Teng alias Tan Tien Chi against Lim Meng Wan. The second defendant should not have been made a party to the action. "The person to maintain an action for specific performance of a contract for a lease must in general be either the intended lessor or the intended lessee or the representatives in interest of either" (*Woodfall* on Landlord and Tenant, 27th Edition page 173, para. 406). As in the circumstances the firm cannot maintain this action then it follows that the firm cannot seek an injunction in respect of a contract entered into between Tan Hor Teng and Lim Meng Wan. This factor alone is in my view enough to dispose of the matter before me today.

Further it is accepted on both sides that the premises in question are rent controlled premises and that the rental of $1,900 a month is well beyond the controlled rent. What the plaintiffs are in effect asking the court to do is to lend its aid in furtherance of an illegal contract. Tan Hor Teng in agreeing to a rent of $1,900 a month knew that it was beyond the controlled rent. He nevertheless agreed to it and now seeks the aid of the court to aid him on this. *Woodfall* on Landlord and Tenant (27th Ed.) page 160, para. 375 has this to say: —

"In an agreement for a lease of rent-controlled premises the prospective tenant agreed to pay rent in excess of the standard rent. Evershed J., while not expressly deciding the point, as he held that there was no final and binding contract, doubted whether the court would order specific performance of an agreement of which one of the terms was to the knowledge of the court not wholly enforceable."

The material available to the court on the hearing of this application for an interlocutory injunction does not disclose that the plaintiff firm has any real prospect of succeeding in their claim for a permanent injunction at the trial and on the authority of Lord Diplock's statement in *American Cynamid* v. *Ethicon Ltd.*[1] at page 323 C-D, the court does not have to go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

I therefore discharge the interim order and dismiss the motion with costs.

Order accordingly.

Solicitors: *S.K. Lee & Co.; Lim Sim & Thian Beng.*

P.B. CHAPMAN v. DEPUTY REGISTRAR OF COMPANIES

[O.C.J. (Wee Chong Jin C.J.) March 10, 1977]

[Singapore — Originating Motion No. 12 of 1967]

Securities — Cancellation of dealer's representative's licence — Issue of false contract notes — Securities Industry Act, 1973, ss. 2, 10, 15, 17 and 23.

In this case the appellant appealed from the decision of the Deputy Registrar of Companies ordering the cancellation of the dealer's representative's licence held by him and ordering that the appellant be permanently disqualified from holding such a licence. It was admitted by the appellant that he had issued two contract notes which were false in stating that shares were sold and purchased on August 6, 1971 when in fact the sale and purchase took place in December 1971. In his defence the appellant stated that he acted on the instructions of Pinder, who was then a director of Sime Darby Ltd. and that he had no reason then to doubt the truth of the information.

Held: (1) the clear inference is that the appellant must have known that the sale and purchase of the shares took place in December 1971 and not on August 6, 1971, as stated in the contract notes;

(2) on the facts before him the Deputy Registrar's decision to cancel the appellant's licence was correct;

(3) although the contract notes were issued before the coming into force of the Securities Industry Act, 1973, section 23 of the Act does not limit the Deputy Registrar to have regard only to facts which fall within the "relevant period" specified in section 17(1);

(4) there appeared to be no element of dishonesty or criminality in the acts of the appellant to merit the extreme penalty of permanent disqualification and the order of permanent disqualification should therefore be set aside.

ORIGINATING MOTION.

C. Darvall Q.C. (*T.H.A. Potts* with him) for the appellant.

Glenn Knight (State Counsel) for the respondent.

Wee Chong Jin C.J.: This is an appeal from the decision of the Deputy Registrar of Companies ordering the cancellation of the dealer's representative's licence held by the appellant, Peter Barry Chapman, and ordering that the appellant be permanently disqualified from holding such a licence.

The determination of the appeal involves the consideration of the Securities Industry Act, 1973, in particular the following sections: —

"Section 2(1). In this Act, unless the context requires otherwise —

'dealer' means a person who carries on the business of dealing in securities as a corporation...;

'dealer's representative' means a person by whatever name described... who performs for that dealer any of the functions of a dealer...' and includes any director... of the corporation who performs for the corporation any of the said functions...'

'dealing in securities' means (whether as principal or agent) making... with any person..., any agreement for or with a view to acquiring, disposing of... securities;

'Registrar' means... and includes any Deputy Registrar of Companies;

'representative' means a dealer's representative...;

'securities' means... stocks and shares in a public company....

Section 10. No person shall act as a dealer's representative unless he is the holder of a dealer's representative's licence....

Section 15. The Registrar shall grant or renew a representative's licence if after consideration of the application he is of the opinion that the applicant is a fit and proper person to hold the licence applied for.

Section 17(1). In deciding whether a dealer or his representative or an investment adviser or his representative is a fit and proper person to hold a licence under this Act the Registrar may enquire into any transactions involving the purchase or sale of securities entered into by that person, whether directly or indirectly, during any period of twelve months preceding the application for a licence or renewal of a licence, as the case may be (referred to in this section as 'the relevant period') to ascertain if that person has in such transaction or series of transactions used dishonest, unfair or unethical devices or trading practices, whether such devices or trading practices constitute an offence under this Act or otherwise.

Section 23(1). The holder of a licence may be required to appear before the Registrar to show cause why his licence should not be cancelled and why he should not be disqualified either permanently or temporarily from holding such a licence —

(a) in the case of an individual — on the ground that he is not a fit and proper person to hold the licence;

(2) On being satisfied that the relevant ground referred to in subsection (1) has been established the Registrar may order that the licence of the person concerned be cancelled and that that person be disqualified, either permanently or for such period as the Registrar may specify, from holding another such licence."

The facts which led the Deputy Registrar to order the cancellation of the appellant's licence and the appellant's permanent disqualification from holding a licence can be briefly stated. The appellant at all material times was a director of J.M. Sassoons & Co. (Pte) Ltd. which is a stock-broking company holding a dealer's licence. On or about December 10, 1971 the appellant authorised or instructed or caused two contract notes to be issued for the sale and purchase of 10,000 Seafield Amalgamated Rubber Company Limited shares, which shares are listed on the London Stock Exchange, by D.W. Pinder to Chen Jan Jee. These two contract notes were dated August 6, 1971 though they should have been dated December 10, 1971, the date when they were in fact issued.

On or about December 11, 1971 the appellant wrote to D.W. Pinder a letter which reads as follows:—

"Dear Dennis,

I refer to our telephone conversation yesterday morning when you asked me to confirm in writing the facts relative to the sale by you of 10,000 Seafield Amalgamated Rubber shares on August 6, 1971, reference Contract No. C5891M.

At approximately 5 p.m. on Friday, August 6, 1971, I received a telephone call from Ken Eales asking me on your behalf to sell 10,000 Seafield shares at 41¼p. with a like purchase at the same price by Mr. Chan Jan Jee in accordance with arrangements which you had made with Mr. Chan in London.

I effected these transactions on that date and confirm that they have been completed as to delivery and payment.

Your sincerely,
P.B. CHAPMAN"

D.W. Pinder was the Chairman of Sime Darby Holdings Limited before August 1971 until October 1973. The shares of the company were and are listed on the Stock Exchange of London, Singapore, Malaysia and Hongkong. On August 10, 1971 Sime Darby Holdings Ltd. made a public announcement of its offer to purchase the whole of the issued share capital of Seafield Amalgamated Rubber Ltd. The offer was successful and by October 1971 it became a subsidiary of Sime Darby Holdings Ltd.

The appellant when asked to show cause why his licence should not be cancelled admitted to the Deputy Registrar that the date stated on each of the two contract notes was false and that his letter of December 11, 1971 to D.W. Pinder to the effect that he had on August 6, 1971 been instructed to act as the broker for the sale and purchase of the 10,000 Seafield Amalgamated Rubber Ltd. shares was untrue. The appellant's explanation for his action was noted down by the Deputy Registrar as follows: —

"Pinder and Sime Darby at that time were synonymous. He was instructed to write the letter by Mr. Pinder. The letter was dictated to my secretary Miss Jenny Sim. Pinder was at that time at the height of his power in Sime Darby and as his broker he was obliged to write the letter and back date the contract.

I absolutely knew nothing about what purpose the back dating of the contracts and the letter were for then. All I asked was the price must be correct as at August 1971.

I have been a broker for about 20 years and I cannot remember any other occasion when I was asked to backdate a contract.

At that time, I suspected the contracts and the letter were intended to cover the dealings of somebody, possibly Mr. Chen Jan Jee.

It was only after I was called up by ASP Puva that I came to know the real purpose of the backdating of the contracts and the letter.

I believe it is not morally wrong if I am to backdate a contract by purchaser and seller who represented that they have indeed effected the contract sometime back and require a covering note for it.

The letter dated December 11, 1971 was dictated probably by Pinder or if not by someone else in Sime Darby. It was not true that Ken Eales telephoned me on 6th August in respect of this 10,000 Seafield shares. As I said I was obliged to give such a letter."

On behalf of the appellant it is submitted that what the appellant had done was to put into writing to evidence an oral agreement or contract that had been entered into by two parties according to the information supplied to him by one of the parties thereto. It is submitted that the fact that the information so supplied to him by Pinder, one of the two parties to the agreement, was in fact false namely, the true date of the oral agreement, does not render his own acts reprehensible as he had no reason to doubt the truth of that information coming as it did from a regular client, who was at all material times a person of high reputation and the head of a large corporation.

It is also submitted that the contracts in question were an instance of "put through" contracts which were normal in the trade. In support of this submission is an affidavit by a manager of a trustee company which does a great deal of stock exchange business in respect of the trust funds managed by it. In the affidavit the expression "put through" is understood by the deponent to mean a transaction in which an existing negotiated oral agreement for the sale and purchase of shares is substantiated in writing by an exchange of "bought" and "sold" contract notes issued by a stock broker. The deponent limits his personal experience of "put through" transactions to those "on a current basis" by which I understand him to mean that the contract notes are issued on the day the oral agreement is concluded.

I am unable to accept any of these submissions. It is clear from the appellant's explanation to the Deputy Registrar that he knew, at the time he caused the issue of the "bought" and "sold" contract notes

in respect of the 10,000 Seafield Amalgamated Rubber Ltd. shares, that Pinder and Chen Jan Jee had not orally agreed on August 6, 1971 to buy these shares. In my judgment, the clear inference from the appellant's explanation is that the appellant must have known that these two gentlemen had orally agreed on the sale and purchase of these shares in December 1971 and not on August 6, 1971. In my judgment the appellant acted as he did, not because he had no reason to doubt the truth of what Pinder told him as to the date of the oral agreement but because, in the appellant's own words, "Pinder was at that time at the height of his power and as his broker (I) was obliged to write that letter and backdate the contract".

Next, the appellant contends that having regard to the provisions of section 17(1) of the Securities Industry Act, 1973, the Deputy Registrar could not lawfully rely on matters prior to "the relevant period" to cancel the appellant's licence. The argument is that as the contract notes were issued in December 1971 and the Securities Industry Act, 1973 did not come into force until May 1973 the Deputy Registrar was wrong in law and in fact in finding that the appellant is not a fit and proper person to hold a dealer's representative's licence. I disagree. The question for the Deputy Registrar to decide was whether or not to cancel the appellant's licence and the empowering section in the Act is not section 17(1) but section 23. In my opinion section 23 does not limit the Deputy Registrar to have regard only to facts which fall within "the relevant period" specified in section 17(1).

Accordingly, I am of the opinion that on the facts before him the Deputy Registrar's decision to cancel the appellant's licence was correct. The next question is whether I ought to uphold the Deputy Registrar's decision to permanently disqualify the appellant from holding a dealer's representative's licence.

There appears to me to be no element of dishonesty or criminality in the acts of the appellant to merit the extreme penalty of permanent disqualification and in those circumstances I would set aside the order of the permanent disqualification. I do not propose to substitute therefor a specified period as temporary disqualification and any future application by the appellant for a dealer's representative's licence must be considered by the Registrar in accordance with the relevant provisions of the Act. The appellant must pay the costs of the appeal.

Order accordingly.

Solicitors: *Rodyk & Davidson.*

MALAYSIAN REPORTS

TEH BEE v. K. MARUTHAMUTHU

[F.C. (Ali Ag. C.J. (Malaya), Raja Azlan Shah and Wan Suleiman F.JJ.) January 6, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 163 of 1975]

Land Law — Claim by registered proprietor for possession of land — Registered title conclusive evidence — Indefeasibility of title — National Land Code, ss. 42, 78(3), 81, 89 and 178.

The appellant claimed possession of a piece of land of which she was the registered proprietress. The claim was based on trespass. The respondent resisted the claim, the principal ground being that the qualified title registered in the name of the appellant was null and void. The trial Magistrate entered judgment in favour of the appellant. On appeal, Ajaib Singh J. held that when the appellant was registered as proprietress the approval of alienation of the land to her had already lapsed and therefore it was *ultra vires* of the State authority to alienate the land to her. The appellant appealed.

Held, allowing the appeal: (1) the fact that the appellant was registered as proprietress necessarily raised the inference that the State Authority on payment of the premium had given fresh approval for the alienation of the land to her;

(2) the fact that the register document of title was in the name of the appellant was conclusive evidence that the title to the land was vested in the appellant;

(3) under the Torrens System the register is everything and it would be wrong to allow an investigation as to the right of the person to appear upon the register when he holds the certificate of title.

[**Editorial Note:** In this case the Federal Court did not touch on some of the important matters which Ajaib Singh J. discussed in his decision. Ajaib Singh J. in his judgment brought out the irregularities practised in some land registries. The publication of his judgment with the Federal Court decision might help to rectify those irregularities by way of some administrative directives by those in authority. These irregularities appear to be carried on in blatant disregard to the provisions of the Land Code relating to the approval of land titles. In his judgment the learned judge also discussed the position of a holder of a T.O.L. after its cancellation or expiration.]

Cases referred to:-

(1) *R.* v. *McDevitt* (1917), 39 O.L.R. 138; 42 Digest 710, 1278i.

(2) *B.* v. *B.* [1961] 2 All E.R. 396.

(3) *Khew Ah Bah* v. *Hong Ah Mye* [1971] 2 M.L.J. 86.

(4) *Creelmon & Anor.* v. *Hudson Bay Insurance Company* [1920] A.C. 194.

(5) *Alan Frederic Frazer* v. *Douglas Hamilton Walker* [1967] 1 A.C. 569.

FEDERAL COURT.

Amir Ismail for the appellant.

A.K.J. D'Cruz for the respondent.

In the High Court *A.K.J. D'Cruz* appeared for the appellant/respondent and *S.F. Leow* for the respondent/appellant. The following grounds of judgment were delivered on July 8, 1976:

Ajaib Singh J.: This was an appeal from the decision of the learned magistrate ordering the appellant to deliver to the respondent vacant possession of land comprised in H.S.(D) 1089 P.T. No. 7 in the District of Seremban. In the statement of claim filed in the lower court the respondent averred that she was the registered proprietor of the land concerned